

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH LEDBETTER

Claimant

VS.

METZ BAKING COMPANY

Respondent

AND

SENTRY MUTUAL INSURANCE COMPANY

Insurance Carrier

Docket No. 248,418

ORDER

Respondent and its insurance carrier appealed the October 29, 2001 Award entered by Administrative Law Judge Brad E. Avery. Oral argument was presented to the Appeals Board (Board) on March 12, 2002.

Appearances

Claimant appeared pro se. Respondent and its insurance carrier appeared by their attorney, Eric T. Lanham of Kansas City, Kansas.

Record and Stipulations

The Board considered the record and adopts the stipulations set forth in the Award by the Administrative Law Judge (ALJ).

Issues

Although there is only one docket number, this case involves two separate claims with separate accidental injuries. The ALJ granted claimant a 10.5 percent permanent partial general disability for claimant's June 15, 1999 back injury and a 12.5 percent permanent partial disability for claimant's August 3, 1999, scheduled injury to his right forearm based upon an average of the functional impairment ratings of Dr. Peter Bieri and

Dr. Lynn Curtis. Respondent and its insurance carrier contend that the percentage of impairment is 0 percent as determined by Dr. Michael Poppa or, in the alternative, that claimant's back injury should be compensated based upon the 5 percent low back rating given by Dr. Curtis (excluding his rating for the upper back/cervical areas) and/or the portion of Dr. Bieri's rating that excludes the 5 percent he gave for range of motion deficits. As for claimant's upper extremity injury, respondent argues that Dr. Curtis' rating should not be considered because he incorrectly used grip strength measurements in his calculations. In addition, respondent and its insurance carrier challenge the sufficiency of the evidence for the ALJ's award of temporary partial disability compensation for claimant's June 15, 1999 injury and the average weekly wage finding for the August 3, 1999 injury. Conversely, claimant argues that Judge Avery's Award should be affirmed in all respects.

Findings of Fact and Conclusions of Law

Having reviewed the entire record, the Board finds the ALJ's Award should be affirmed. The Board agrees with the findings of fact and conclusions of law that are set out in the Award. It is not necessary to repeat those findings and conclusions. Therefore, the Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. In particular, the Board agrees that, in this instance, greater weight should be given to the functional impairment opinions of Drs. Bieri and Curtis.

In addition, the Board agrees with the Award of temporary partial disability compensation for the June 15, 1999 injury. Claimant was forced to leave work due to his injury and, thereafter, earned less than the average gross weekly wage that he was earning at the time of his injury.¹ Also, during the time those benefits were payable, claimant had not yet reached maximum medical improvement.

Finally, with regard to the ALJ's finding that claimant's gross average weekly was \$550 for the August 3, 1999, injury, the Board finds claimant's testimony to this effect was uncontradicted. "Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy, and is ordinarily regarded as conclusive."²

¹ K.S.A. 44-510e(a).

² Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, Syl. ¶ 2, 558 P.2d 146 (1976).

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated October 29, 2001, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of April 2002

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Eric T. Lanham, Attorney for Respondent and Insurance Carrier
Joseph R. Ledbetter, pro se Claimant
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director